

REMARKS

The Office Action dated February 2, 2005 has been received, its contents carefully noted, and the applied citations thoroughly studied. The foregoing revisions to the claims are tendered with the conviction that patentable contrast has now been made manifest over the known prior art. Accordingly, all rejections tendered by the Examiner in the above-referenced Office Action are hereby respectfully traversed and reconsideration is respectfully requested.

At the outset, undersigned wishes to gratefully acknowledge the Examiner's perception of patentable subject matter as it pertains to claim 35.

It is believed that the foregoing revisions to the claims are within the metes and bounds of the recently articulated Supreme Court *Festo* case, in that all equivalents susceptible to capture have been retained in that one skilled in the art, at the time of this amendment, could not have reasonably be expected to have drafted a claim that would have literally encompassed any other equivalent.

Rejections under 35 U.S.C. § 112

The Examiner has rejected claims 2 through 7 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. The Examiner believes that the claim contains subject matter that was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. Specifically, the Examiner refers to support for the accelerant formed as a slurry.

A "slurry" is a watery mixture of insoluble matter. See, e.g., *In re Kerkhoven*, 205 USPQ 1069, 1070 n.3 (CCPA 1980). The Examiner's kind attention is directed to page 16 and figure 3A and 3B of the specification as filed, which state that charcoal, starch, and various nitrates, and water are combined to produce an "accelerant mixture". At the very least, charcoal is "insoluble matter". The accelerant mixture, as described, clearly meets the definition of a "slurry".

Page 16 further states, "[t]he amount of liquid present in the accelerant mixture may be varied to produce optimal results". Page 18 states that "the accelerant mixture flows into the venting holes" and "[t]he degree to which the inside surface is coated is directly related to the viscosity of the accelerant mixture". The accelerant mixture must flow into the venting holes and coat the inside surface; this could not happen if the accelerant mixture were not a slurry.

Thus, the rejection under 35 U.S.C. § 112, first paragraph, should be withdrawn.

Rejections under 35 U.S.C. § 103

Claims 8 and 10 are rejected under 35 U.S.C. § 103(a) as being unpatentable over CN 1196382 in view of Glazkova.

Claim 8 has been amended to recite that the accelerant is present as a gradient in said monolith. Neither of the Examiner's citations provide support for this element.

Claims 27-30 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Christian (USP 4,243,393). It is the Examiner's opinion that the wax in Christian functions as an accelerant.

A Declaration under Rule 132 is enclosed herewith, along with the Curriculum Vitae of the Declarant, Dr. Jose Torero. In the Declaration, Dr. Torero details the reasons that Christian's wax does not function as an accelerant as defined in the instant application.

Specifically, the wax in Christian quickly ignites and slowly heats the underlying fuel until it can sustain a flame on its own. The accelerant of the present invention ignites the fuel by means of a rapid transfer of oxygen and heat through the fuel surface. Wax does not accelerate heating, and, thus, is not an "accelerant". The accelerant of the present invention does accelerate heating, and is properly termed an "accelerant". Therefore, the rejection with respect to Christian should be withdrawn.

Claims 2, 4, 5, 8, 10, 12, 32, 34, 39 and 41 through 43 are rejected under 35 U.S.C. § 103(a) as being unpatentable over GB 2,306,502.

GB 2,306,502 discloses a briquette containing carbonaceous material and an accelerant layer. The briquette is made in a mold under pressure, but no further details about the molding process are given. For example, at page 8, line 21, the briquette was "formed under pressure in a special mould [sic] to get the proper shape and size."

Claims 2, 4, and 5 explicitly require, *inter alia*, a second pressing step to form the fuel. No second molding step whatsoever is disclosed in the GB patent. The Examiner now states that because GB teaches a special mold and because GB teaches a fuel that has two layers, GB therefore suggests that the fuel is made in the manner of the instant invention. This is clearly improper. The special mold of GB refers only to the "shape and size" of the briquette, as noted hereinabove.

The Examiner is penalizing applicant by using its disclosure against it. GB discloses nothing regarding more than one pressing step, and the Examiner is engaging in unbridled speculation in inferring a second pressing step.

As a further note, the Examiner states that "since [GB] teaches that the briquettes comprise two distinct layers (see page 9), this teaching suggest [sic] that the briquette is prepared in a method similar to that of the present claims". The instant claims do not teach two distinct layers, as applicant has previously stated. The instant invention teaches a gradient. The Examiner states that GB teaches two distinct layers. Claim 8 has been amended to make the gradient element explicit.

With respect to claims 32, 34, 39, 41, and 42, GB does not disclose the proportions of the briquettes according to the instant invention. No support is offered by the Examiner that the claimed proportions and any proportions taught in GB overlap. The Examiner merely makes a blanket statement about proportions and summarily dismisses all claims reciting proportions therewith. This is not proper. Even if one composition were taught by GB, that does not warrant a conclusion that all claimed proportions are taught by GB.

Claim 6 is rejected under 35 U.S.C. § 103(a) as being unpatentable over GB 2,306,502 in view of Young (USP 4,822,380).

Claim 6 requires the second pressing step, discussed hereinabove, that is not present in GB.

Young teaches coating of coal or charcoal with a latex mixture to prevent it from breaking and to make it cleaner to handle.

The Examiner states that the latex covering melts when the briquette is heated, and thus remains in place "until use". Claim 6 has been amended to state that the protective covering is removed prior to use.

Claim 7 is rejected under 35 U.S.C. § 103(a) as being unpatentable over GB 2,306,502 in view of Young (USP 4,822,380) and Avedikian (USP 3,934,986).

Claim 7 requires the second pressing step, discussed hereinabove, that is not present in the GB patent. Claim 7 also requires a moisture-impervious coating that is removed before use, which Young does not provide.

In response to the Examiner's statements, claim 7 has been amended to state that the protective covering is removed prior to use.

Claims 3, 9, 13-26, and 37-38 are rejected under 35 U.S.C. § 103(a) as being unpatentable over GB 2,306,502 in view of Avedikian (USP 3,934,986).

Claim 3 requires the second pressing step, discussed hereinabove, that is not present in the GB patent.

Claim 8, from which claim 9 depends, and claim 13 have been amended to recite the presence of a gradient of accelerant material.

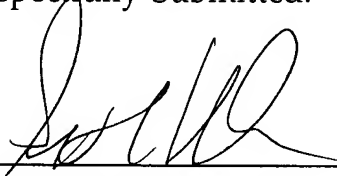
The Examiner notes, at page 4 of the Office Action, that GB "teaches that the briquettes comprise two distinct layers". The briquettes of the instant invention do not comprise two distinct layers. The independent claims of this invention has been amended to make explicit the gradient element of the instant invention.

In view of the foregoing, it is respectfully requested that the Examiner pass this case to issue. If, upon further consideration, the Examiner believes further issues remain outstanding or new ones have been generated, undersigned

respectfully requests that the Examiner call undersigned to expeditiously resolve same.

Dated: March 31, 2005

Respectfully Submitted:

A handwritten signature in black ink, appearing to read 'Bernhard Kreten', written over a horizontal line.

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